

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANN BURTON,

Plaintiff,

- against -

SILVERCREST CENTER FOR NURSING
AND REHABILITATION; MARIE
MITCHELL; DARLENE WEITZMAN,

Defendants.

11-CV-2757
(SLT) (LB)

DECLARATION IN FURTHER SUPPORT OF MOTION TO DISMISS

ALESIA J. KANTOR declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an attorney with the firm of Nixon Peabody LLP, attorneys for defendant Silvercrest Center for Nursing and Rehabilitation (“Defendant”) in the above-captioned matter. As such, I am fully familiar with the facts and circumstances relevant to this matter.
2. I submit this declaration in further support of Defendant’s motion to dismiss the complaint of Plaintiff *pro se* Ann Burton (“Plaintiff”).
3. On April 10, 2012 the Court set the briefing schedule for Defendant’s motion, providing that Defendant shall serve its motion via overnight mail on or before May 3, 2012, Plaintiff shall mail her reply to Defendant’s attorneys by June 4, 2012, that Defendant has until June 18, 2012 to serve a copy of its reply, if any, upon Plaintiff via overnight mail on or before June 18, 2012, and that Defendant shall file the fully-briefed motion with the Court on or before June 18, 2012 (Docket Entry #19).
4. On Friday May 4, 2012, this office served Defendant’s Notice of Motion to Dismiss the Complaint, Memorandum of Law in Support of Motion to Dismiss the Complaint and Affirmation of Alesia J. Kantor in Support of Motion to Dismiss the

Complaint, as well as a cover letter listing the items served, upon Plaintiff at the following address of record:

Ms. Ann Burton
General Delivery
46-02 21st Street
Long Island City, NY 11101

5. Service was made via overnight delivery as directed in the Court's April 10, 2012 Order (Docket Entry # 19). This firm used the Express Mail overnight delivery service of the United States Postal Service for service, as Federal Express had previously refused to deliver to Plaintiff's address of record.

6. On Monday May 7, 2012, the package served upon Plaintiff was returned to this office by the United States Postal Service, marked as follows "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." A photocopy of the returned envelope with this marking is attached hereto at Exhibit "A."

7. Plaintiff was to serve her opposition to the motion papers via regular mail upon this office on or before June 4, 2012 (Docket Entry # 19). We have not received any opposition as of the date of execution of this Declaration and do not expect to receive opposition, given that the opposition papers are now ten days late and the postal service's representation that it was unable to deliver the motion papers.

8. For the reasons set forth in Defendant's moving papers, Defendant respectfully requests that its motion be granted in its entirety and that Plaintiff's Complaint be dismissed with prejudice.

Dated: June 18, 2012
Jericho, New York


ALESIA J. KANTOR